

DEFEND THE GUARD

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Attachment 2



INTRODUCTION

Defend the Guard is state-based legislation which would prohibit the deployment of a state's National Guard units into active combat without a formal declaration of war by Congress, as required by Article I, Section 8 of the U.S. Constitution.

Active combat is colloquially defined as a situation where American soldiers are shooting and being shot at. Defend the Guard would have no effect on either deployments to other states in the union or overseas training missions.

This legislation intends to use the American principle of federalism to realign and correct the balance of power between the executive and legislative branches of the federal government. Its purpose is to require a shift in American foreign policy, and curtail the federal government's ability to wage endless war without congressional oversight or accountability.

Nineteenth century American statesman and Secretary of State Daniel Webster advised, "It will be the solemn duty of the state governments to protect their own authority over their own militia, and to interpose between their citizens and arbitrary power [by the federal government]." As long as Washington DC—heavily influenced and corrupted from contributions by foreign governments and the military-industrial complex—seeks to use the National Guard for extralegal warfighting, state legislators have a responsibility to enforce federal law and block such action.

Members of the National Guard in the individual States maintain a unique "dual status"—both State and Federal—that no other branch of service or component has. This dual status is rooted in Article I, Section 8 of the U.S. Constitution, which specifies that "Congress shall have the power...To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress."

Serving both state and nation in times of need, soldiers and airmen in the National Guard swear an oath to protect and defend not just the Constitution of the United States, but also the state in which they serve. In peacetime the Guard is commanded by the governor of their respective state, assisting these civil leaders during natural disasters, state emergencies, and civil unrest.

National Guardsmen may be mobilized into active federal service through invocation of either Title 10 or Title 32.

When mobilized under Title 10 U.S.C. Guardsmen are directed by the president to report for active duty in an official capacity where they are under the command of the president of the United States and the federal government will provide budgetary funding. Title 10 allows the president to “federalize” National Guard units for the lawful purposes of national defense, overseas training, and enforcement of federal authority.

When mobilized under Title 32 U.S.C. Guardsmen remain under the command of the governor, who is the commander in chief of his or her respective state’s National Guard. Service under Title 32 is primarily state active duty, or what is commonly referred to as “State Call Up.” These missions can be in response to natural or man-made disasters and homeland defense, and where individual states will provide budgetary funding.

Defend the Guard legislation gives no impediment on the ability of the president or a governor to activate the National Guard under Title 10 or Title 32 authority, respectively. The bill clearly defines the governor’s authority to command the National Guard within the state. When Congress votes and approves a formal declaration of war, as required by Article I, Section 8, the National Guard will have the legal approval to perform combat operations beyond the borders of the United States and under the command of the president as outlined by Title 10 U.S.C.

The National Guard forms the backbone of the U.S. Armed Forces, possessing close to 450,000 combined members of the Army National Guard and Air National Guard. Since 2001, around 45% of the troops deployed in the Global War on Terror have been Guardsmen, and those units have incurred over 18% of the casualties. As recently as December 2020, more than 57,000 Guardsmen were deployed overseas in both combat and “peacekeeping” operations.

As of 2022, Defend the Guard has been introduced in twenty-one state legislatures representing every region of the country. Bill sponsors have included conservative Republicans, progressive Democrats, and elected Libertarians.

The Defend the Guard movement has been endorsed by Senator Rand Paulⁱ of Kentucky, Rep. Paul Gosarⁱⁱ of Arizona, ret. Brig. Gen. John Bahnsenⁱⁱⁱ, whistleblowers Daniel Ellsberg^{iv} and Matthew Hoh^v, and former Rep. Ron Paul^{vi} of Texas, among others.

Defend the Guard legislation has been profiled on *PBS Newshour*^{vii}, *NPR*^{viii}, *The Hill*^{ix}, *The Washington Times*^x, *Military.com*^{xi}, *The National Interest*^{xii}, and *Reason*^{xiii}, among others.

For years, polling has consistently demonstrated that U.S. veterans favor military withdrawals from our wars in the Middle East^{xiv} at even higher percentages than civilians. This included Afghanistan, where over two-thirds of veterans^{xv} supported a withdrawal, and Iraq and Syria, where thousands of soldiers remain stationed, enduring regular missile attacks and other hostile actions.

Following the end of conscription during the Vietnam War, most Americans have successfully insulated themselves from the costs of war and foreign policy has become an afterthought. But for veterans, many of whom return from back-to-back deployments feeling socially isolated and losing their marriages, homes, career prospects, and even lives to suicide^{xvi}, the domestic consequences of endless war are daily realities.

The continued overuse and abuse of the National Guard, from unconstitutional deployments into warzones, extraneous deployments like Washington DC following the January 6th riot, and all-around poor treatment in housing and care, is contributing to a growing recruitment crisis in the military and decreased rates of retention.

The motto of the National Guard is “Always Ready, Always There.” But as long as they remain tools for undeclared war fighting and unmonitored global policing, they will be unable to fulfill this mission statement.

When the Louisiana National Guard is constructing dams and levies in Iraq, they can’t respond to Hurricane Katrina in New Orleans. When the Kentucky National Guard is guarding oil derricks in Syria, they can’t respond to tornadoes ravaging eleven counties in western Kentucky. When the Florida National Guard is training Ukrainians for a proxy war against Russia in Europe, they can’t respond to hurricanes on the Gulf Coast. When over 1,000,000 acres of Oregon burned in 2021 and the Oregon National Guard and their heavy-lift Chinook helicopters were assisting in the efforts, they were uprooted and relocated to a quarantine tent in Afghanistan and their helicopters grounded.

Critics of the bill claim that the federal government will enact retribution by defunding a state’s National Guard, and remove bases, equipment, and other resources. Such an acrimonious repercussion would result in disastrous political consequences for those responsible. Federal funding allocated to the states for readiness, training, and equipment is not addressed or affected by Defend the Guard legislation. In Kansas, where Defend the Guard was introduced in January 2022, the Director of the Budget found the bill “would not have a fiscal effect^{xvii}.”

ⁱ <https://www.wyomingnewsnow.tv/content/news/US-Senator-Rand-Paul-in-Wyoming-for-Defend-the-Guard--567879111.html>

ⁱⁱ <https://libertarianinstitute.org/articles/arizona-must-pass-defend-the-guard/>

ⁱⁱⁱ <https://libertarianinstitute.org/articles/americas-most-decorated-living-soldier-says-bring-our-troops-home/>

^{iv} <https://www.youtube.com/watch?v=hsTsJfqBNkc>

^v <https://www.youtube.com/watch?v=OnxSdP9m89o>

^{vi} <https://www.youtube.com/watch?v=2bx0TreIC44&t=308s>

^{vii} <https://www.pbs.org/video/guard-duty-1625515865/>

^{viii} <https://www.npr.org/transcripts/1064679135>

^{ix} <https://thehill.com/blogs/congress-blog/politics/553714-congress-wont-end-the-wars-so-states-must/>

^x <https://www.washingtontimes.com/news/2020/dec/14/states-must-take-the-lead-to-get-us-out-of-pointle/>

^{xi} <https://www.military.com/daily-news/2021/07/11/states-gear-fight-keep-national-guard-out-of-war.html>

^{xii} <https://nationalinterest.org/feature/veterans-congress-end-forever-wars-97477>

^{xiii} <https://reason.com/2022/02/07/these-bills-would-keep-the-national-guard-out-of-unconstitutional-wars/>

^{xiv} <https://bringourtroopshome.us/polls>

^{xv} <https://globalaffairs.org/commentary-and-analysis/blogs/us-public-supports-withdrawal-afghanistan>

^{xvi} <https://watson.brown.edu/costsofwar/papers/2021/Suicides>

^{xvii} http://kslegislature.org/li_2022/b2021_22/measures/documents/fisc_note_sb370_00_0000.pdf

“It will be the solemn duty of the state governments to protect their own authority over their own militia, and to interpose between their citizens and arbitrary power (by the federal government).”

- SECRETARY OF STATE DANIEL WEBSTER

“We Americans who will protect our flag should have a voice in where it is flown.”

- MAJOR GENERAL SMEDLEY BUTLER, TWO-TIME MEDAL OF HONOR RECIPIENT

“I am...unwilling to commit my sons or any American’s sons to the policing of the rest of the world.”

- LIEUTENANT GENERAL HANFORD MacNIDER, COMMANDER OF THE AMERICAN LEGION

“If in the great field of foreign policy the President has the arbitrary and unlimited powers he now claims, then there is an end to freedom in the United States not only in the foreign field but in the great realm of domestic activity which necessarily follows any foreign commitments.”

- SENATOR ROBERT TAFT OF OHIO

THE OPPOSITION

(GASLIGHTING AND FEAR-MONGERING)

**DEFEND
THE GUARD**
UPHOLD THE CONSTITUTION



BRAD LITTLE
GOVERNOR

MILITARY DIVISION, STATE OF IDAHO
4040 W. GUARD STREET
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THE ADJUTANT GENERAL
MICHAEL J. GARSHAK

February 4, 2021

Representative Ben Adams
Idaho House of Representatives
District 13, House Seat B
1921 Hoover St.
Nampa, Idaho 83686

Dear Representative Adams:

I am writing to you today to inform you that I do not support RS28320C1, which is commonly referred to as the Defend the Guard proposal. This position letter describes in detail the three major concepts supporting my objection to the legislative proposal. I appreciate your interest in the Idaho National Guard and your desire to enhance our organization, but the Defend the Guard proposal is not a feasible way to accomplish that objective.

By way of background, the Defend the Guard proposal would prohibit the Idaho Governor from releasing any Idaho National Guard member from the state onto Title 10 Active Duty for overseas combat missions unless the U.S. Congress has passed an official declaration of war or taken action pursuant to Article I, Section 8, Clause 15 of the U. S. Constitution. The Defend the Guard proposal would also prohibit the Governor from consenting to the deployment of any Idaho National Guard member on Title 32 Defense Support for Civil Authorities missions (e.g. Hurricane Harvey) overseas to Hawaii and the U.S. territories.

There are three major concepts that justify my opposition to this proposed legislation. First, because the primary focus of the Idaho National Guard is to train for its federal mission of fighting and winning the Nation's wars, the equipment we are issued, the funds provided to maintain and operate that equipment, and the funds to pay our personnel are endangered by this proposal. Second, the United States Congress routinely authorizes military operations short of declared war, which ensures that there is a check on the President's ability to send troops overseas. Third, federal law does not grant governors the authority to object to the federal activation of National Guard for overseas contingency operations.

1. **If passed, the Defend the Guard proposal jeopardizes the Idaho National Guard's force structure, ability to receive and use federal equipment, and ability to receive federal funds for pay and allowances, which would have a devastating economic impact to the State of Idaho.**

The vast majority of the funding for pay, operations, and maintenance of the Idaho National Guard is federal. If Idaho were to limit by state law when and if the appropriate federal authority could call on the Guard for federal combat or DSCA missions, we believe Idaho would lose federal missions, equipment, and funding. The impact on funding could be as much as hundreds of millions annually. Specifically, lack of federal resources affects the following:

- **Military Equipment:** All Idaho National Guard military equipment is bought, maintained and inventoried by the federal government. A very small percentage of equipment has been bought by the state, and the majority of which are used for the maintenance and upkeep of state-owned or licensed National Guard facilities.
- **Major Weapon Systems:** Every Idaho M1A2 SEP Abrams Tank, M2A2 Bradley Fighting Vehicle, Blackhawk Helicopter, and A-10 Thunderbolt II is owned by the federal government and on loan to the Idaho National Guard for training and operational purposes. The federal government also funds the costs associated with the operation and maintenance of that equipment.
- **Personnel Pay and Benefits:** Except for instances of state active duty activations, all pay and benefits for the approximately 5,000 full and part-time uniformed and federal civilian employees of the Idaho National Guard are 100% paid for by the federal government. Additionally, the federal government pays the salaries, in whole or in part, of all but 28 of the Division's 436 State of Idaho employees. So, out of a workforce of over 5,000, only 28 employees are funded by the State of Idaho.
- **Authorized Strength and Units:** The manning of the IDNG is based upon federally authorized positions in all of our federally recognized units. The authorization to have these units and related positions could be pulled from Idaho by the Department of Defense and given to states that do not restrict the use of their National Guard members in the manner proposed by the Defend the Guard proposal.

Loss of federal support is a very real possibility for states who do not make their National Guards available for federal missions. Title 32 of the United States Code provides guidance concerning the National Guard, including how it is funded, how members are called to federal duty, how units are given the states, and the like. Relevant to the Defend the Guard proposal, 32 U.S.C. § 108 states, in full, "If, within a time fixed by the President, a State fails to comply with a requirement of this title, or a regulation prescribed under this title, the National Guard of that State is barred, in whole or in part, as the President may prescribe, from receiving money or any other aid, benefit, or privilege authorized by law." Thus, the President acting through the Secretary

of Defense may very easily and swiftly withdraw National Guard funding from a state if a state fails to comply with Title 32 of the United States Code.

The Idaho National Guard is the State of Idaho's fourth largest employer. In Fiscal Year 2018, the IDNG received \$226,085,581; in FY19, the IDNG received \$228,311,657; and in FY20 the IDNG received \$201,417,995 from the federal government for construction, operations, and personnel pay. There would be an immediate and devastating economic impact to the State if the Idaho National Guard lost force structure and funding provided by the federal government.

2. The United States Congress routinely authorizes use of military force and routinely approves the President's use of force under the War Powers Resolution (50 USC §§ 1541-1548).

The US Congress has not formally declared war since World War II in 1941. One of the legal issues in the past several conflicts has been the fact that the conflicts are between non-nation state terrorist groups and the United States as opposed to sovereign nations as the Constitution contemplated. In the past nearly 80 years, Congress has passed legislation either authorizing use of military force or approving the President's use of force. This includes use of force in Korea, Vietnam, Iraq, and Afghanistan, and the multitude of smaller conflicts during that 80-year period.

Relevant to current and recent overseas military operations, Congress passed in 2001 after the 9/11/2001 attacks, an Authorization to Use Military Force (AUMF). The 2001 AUMF empowers the President to "use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the [9/11 terror attacks]" and to use that "necessary and appropriate force" to "prevent any future acts of international terrorism against the United States by such nations, organizations or persons." (Public Law 107-40, Sept. 18, 2001). Congress intended the 2001 AUMF to "constitute specific statutory authorization within the meaning of section 5(b) of the War Powers Resolution." *Id.* at Sec. 2(b)(1).

The 2001 AUMF has been the legal authorization used by the recent Presidents to conduct military operations in Southeast Asia. Thus, Congress has authorized US combat activities against terrorist groups for the past 19 years, even though there has not been a declaration of war. By specifically citing to the War Powers Resolution (50 USC §§ 1541-1548), the US Congress is consenting to the commitment of the United State to an armed conflict.

The purpose of making reference to the 2001 AUMF and the War Powers Resolution is not to debate the legalities under the U.S. Constitution, but rather to point out that it is a complex matter, which is not easily resolved by the federal government let alone independently acting states, and may have those effects as described in this position letter.

3. Current federal law does not authorize state governors to object to the activation of National Guard troops in support of overseas contingency missions.

Generally, 10 United States Code (USC) § 12301 provides controlling federal statutory authority for activation of National Guard personnel. 10 USC §12301(a), which is the section of Title 10 under which National Guard members are called to duty for combat tours, does not require the consent of the Governor. That section reads:

In a time of war or of national emergency declared by Congress, or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the persons affected, order any unit ... of a reserve component under the jurisdiction of that Secretary to active duty for the duration of the war or emergency and for six months thereafter. ... (Emphasis Added).

The "or when otherwise authorized by law" provision in this statute is very important because when Congress passes a law like the 2001 AUMF pursuant to its authority in the War Powers Resolution, that law gives the President and the Secretary of Defense legal authority to involuntarily call up the National Guard without consent. Under this section, governors have no right to object.

10 USC § 12301 provides two areas where governors may consent, 10 USC § 12301(b) and (d). However, 10 USC §12301(f) states, "The consent of a Governor described in subsections (b) and (d) may not be withheld (in whole or in part) with regard to active duty outside the United States, its territories, and its possessions, because of any objection to the location, purpose, type, or schedule of such active duty." Therefore, while a governor may object to activation under (b) and (d), the scope of the governor's objection is limited.

As such, this legislative proposal, if passed, would create a conflict between State and Federal laws, which the State would most surely lose under the federal preemption doctrine.

Therefore, for the reasons described above, I do not support RS28320C1, which is more commonly referred to as the Defend the Guard proposal.


Michael J. Gafshak
Major General, IDNG
The Adjutant General/Commander

“Our government has no right to send American boys to their death in any battlefield in the absence of a declaration of war, and Article One, Section Eight of the Constitution vests the prerogative of declaring war in the Congress of the United States.”

- SENATOR WAYNE MORSE OF OREGON

“We have only two planks in our platform: The Declaration of Independence and the Constitution. Our motto: ‘I am an American.’”

- SENATOR ROBERT LA FOLLETTE JR. OF WISCONSIN

“I am tired and sick of war. Its glory is all moonshine. It is only those who have neither fired a shot nor heard the shrieks and groans of the wounded who cry aloud for blood, for vengeance, for desolation. War is hell.”

- WILLIAM TECUMSEH SHERMAN, COMMANDING GENERAL U.S. ARMY

“Our Founding Fathers intended that the power to commit a nation to war be lodged in Congress, and that’s what the Constitution says. The power to declare war is one of the most important powers given to Congress, and it should remain with Congress.”

- SENATOR RAND PAUL OF KENTUCKY

A CONSTITUTIONAL RESPONSE

**DEFEND
THE GUARD**
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2

To: Members of the Transportation and Defense Committee.

In his recent letter regarding RS 28320C1, the "Defend The Guard" legislation, Idaho National Guard Adj. Gen. Garshak -- who follows orders from our state commander-in-chief -- raised three objections to the legislation. In the context outlined below, I will address each of these objections. To clarify, this bill does not and would not diminish the Idaho National Guard's footprint in Idaho or its proper uses, but rather ensures that it is used in accordance with the highest law in the land. Per Article 1, section 8 of the United States Constitution, Congress is given the exclusive responsibility to declare war, and to provide for the calling forth of the militia to execute the laws of the union, suppress insurrections, and repel invasions.

1. The concern raised is that this proposal jeopardizes the Idaho National Guard's force structure and ability to receive and use federal equipment, along with federal funds for pay and allowances.

In response to the first concern raised, for sake of absolute clarity, his objection regarding legitimate Title 32 mobilizations of the Guard has been eliminated by a substitute, RS 28320C2.

Section 108 of Article 32 US Code authorizes forfeiture of funds when a state fails to comply with the requirements of Title 32. The code sections that authorize the executive to activate the National Guard for active duty combat are all contained in Title 10. Title 32 specifically notes that Congress has the authority to call the National Guard, and limits this to matters of national security. While this incongruity may be dismissed as a technicality, it raises a barrier to the possibility that the federal government would ever deny funding to our National Guard if Idaho refuses to accede to their deployment to combat duty absent a Congressional declaration of war.

More broadly, this disconnect is a demonstration of the way in which authority has slowly been usurped by the federal executive branch, which is the very issue this legislation seeks to remedy.

In addition, Section 108 does not result in an immediate forfeiture of funds. Instead, the President must first give the state a timeframe in which to remedy the failure to comply. Even if a state did not yield, the President still has discretion to determine if and how much funding might be withdrawn.

However, as a matter of practical political reality, defunding a state's Guard units would be both politically unpopular and risk the Guard's ability to respond to real national and state emergencies (i.e. floods, fires, covid-19.) This would make it highly unlikely that a President would retaliate in such manner in response to a state's eminently reasonable demand that before our National Guard -- the state's standing militia -- is called into active duty combat overseas, the President first seek and obtain a Congressional declaration of war as provided by the Constitution.

This "paper tiger" threat is even more impractical and unlikely in light of the clarification in RS 28320C2, which specifies that *nothing in this section limits or prohibits the governor from consenting to the deployment of any Idaho National Guard member under Article 32, U.S.C., defense support for civil authority missions within the United States and the United States territories.*

2. The second concern objection asserts, and accurately so, that Congress routinely now authorizes the President's use of military force by means other than a declaration of war. It is that routine abdication of Congressional authority that is the very point of the proposed legislation.

Several sections under Title 10 of U.S. Code address the authority to transfer state National Guard units to active federal duty. Section 12301(a) states that active duty may be initiated "in time of war or of national emergency declared by Congress, *or when otherwise authorized by law...*"

The primary point of this legislation is to adopt state policy asserting that that provision of Title 10 -- "*or when otherwise authorized by law*" -- cited by the general as authorizing the federal government to federalize our National Guard even if in conflict with state law, is an evasion of the Constitutional requirement that Congress declare war and is *itself* unconstitutional.

Subsection (b) of that same section requires the consent of a governor for mobilizing the state National Guard; however, it is argued that (b) is purportedly superseded by subsection (f), known as the Montgomery Amendment, which prohibits a governor from withholding consent based on the location, purpose, type or schedule of active duty.

The Montgomery Amendment was upheld by the U.S. Supreme Court 35 years ago in a narrow ruling that addressed *only* the Guard's mobilization overseas for "**training**" purposes during "**peacetime**." The Court did not opine on the objective of this proposed legislation: to prohibit deployment of our National Guard to active **combat** duty overseas during a time of undeclared **war**.

While Congress has routinely used Authorizations for Use of Military Force over the last near 80 years, the courts have not tested the question of whether deployment of the National Guard to active duty combat can be limited to Congressional declarations of war.

Contrary to the general's prediction, we believe that the conservative majority of an entirely different modern U.S. Supreme Court – including three very recent appointees by President Trump – might take a much stricter view regarding the principle of compliance with the “original intent” of the U.S. Constitution. In any case, it is not the job of political appointees such as the general to take on the responsibilities of a U.S. Supreme Court justice.

In the relevant case -- *Perpich v. Department of Defense* -- the Court summarized, “The question presented is whether the Congress may authorize the President to order members of the National Guard to active duty for purposes of **training** outside the United States **during peacetime** without either the consent of a state governor or the declaration of a national emergency.” Pp. 496 U.S. 347-355.”

To clarify and repeat, the Court has not prohibited a state from requiring that the deployment of its National Guard to active duty **combat** during a time of active military conflict must be preceded by a Congressional declaration of war.

Notably, the AUMF authorizing use of U.S. military forces in the endless “War on Terror” was voted on by Congress in 2001, meaning no member of Congress has voted on that issue in two decades, and many if not most current members of Congress have never voted on that authorization at all.

Do you imagine that's what our Founding Fathers intended, that one AUMF 20 years ago would stand as an eternal blank check to the executive branch for use of war powers, especially given statements by the Founders expressly to the contrary over two centuries ago?

3. The third question raised is the most important, because it asserts that current federal law does not allow state governors to object to the deployment of National Guard troops for overseas combat missions.

In fact, the proposed legislation has nothing to do with the *governor's* “right” to object.

Instead, it would be a state *legislative* prohibition – and if enacted, a state law – prohibiting the mobilization of our National Guard for overseas combat absent a Congressional declaration of war.

Similarly, this legislation has nothing to do with a governor choosing to block deployment based on “any objection to the location, purpose, type, or schedule of such active duty,” as described by Title 10. Instead, this legislation by state law would prohibit National Guard deployment based on Congress's failure to fulfill its clearly-specified duty under the U.S. Constitution.

Still, even Title 10 itself, in subsection (d), provides: *“At any time, an authority designated by the Secretary concerned may order a member of a reserve component under his jurisdiction to active duty, or retain him on active duty, with the consent of that member. However, a member of the Army National Guard of the United States or the Air National Guard of the United States may not be ordered to active duty under this subsection without the consent of the governor or other appropriate authority of the State concerned.”*

The certitude of the general's prediction of how the U.S. Supreme Court might rule on this question is specious, presumptive, and reflective of a political appointee simply following orders from our state Guard's commander-in-chief, the very same governor who we have strongly agreed – regarding other arbitrary edicts and orders – should not be allowed to dictate to this committee or to the legislature elected by the people of Idaho.

In any case, I simply and respectfully ask for the courtesy of allowing the bill to be printed so that the people of Idaho can be engaged in a public discussion of this Constitutional principle, especially at a time when the overwhelming majority of Americans – including veterans and those still serving in uniform – believe it's time we bring *all* our troops home from endless wars in the Middle East.

Thank you in advance for that courtesy and for your consideration.

Respectfully,

Representative Ben Adams

RealClear Defense

Defend The Guard – And the Constitution

By Darin Gaub / Armed Forces Press / February 21, 2023



Madam Chair and members of the House State Administration Committee. My name is Darin Gaub. I stand in support of this bill as an individual, a 7-deployment combat veteran, a 28-year-in-service retired senior Army officer, co-founder of veteran-founded Restore Liberty, founder of the Global Veterans Coalition, and also on behalf of Montanans for Limited Government. I would like to thank the sponsor and twenty-five co-sponsors for bringing this bill.

I would like to start by discussing my military, foreign policy, and strategic experience. I hope you will be able to see that it is extensive and of great value to this discussion.

I served in the military from the rank of Private to Lieutenant Colonel. Even as a Private, I worked at the White House, the Pentagon, and in many of the nation's highest security areas requiring the most sensitive security clearances. After becoming an officer my primary duty was as an aviation officer flying helicopters. During my career, I served on seven overseas deployments — four in Afghanistan,

one in North Africa, one in East Asia, and one in Europe. These deployments combined with my experience gained state-side allow me to speak to this bill with what I hope is enough authority to gain your respect and trust.

Officers in the military are also “generalists” in that we will work in many areas of government that are not related to those primary duties. While dedicated to my primary aviation duties I commanded army organizations of up to 3,500 personnel. I worked within Title 32 and Title 10 requirements, and with civilians to build successful teams. My ability to build high-performing teams spoke for itself across the Army Aviation community. But my experience as a generalist is what is most applicable to this testimony.

As a generalist, I served as a national strategic planner where I developed plans for many regions around the world, including plans for homeland security missions. I worked within the constraints and limitations defined in United States Code (U.S.C) and within many regulations and departmental policies. Those regulations

and policies were produced by the Department of Defense, Department of State, and many others. Not all these efforts can be made public or published in unclassified environments, many of those efforts dealt with multi-national and multi-state security environments. My duties required me to brief national leaders, congressional representatives, and department heads across the full range of government activities. I also worked with foreign military and government leadership on four continents and across multiple countries.

Now, as a retired officer, I volunteer as an executive coach, foreign policy advisor, and military strategy advisor. I also co-founded a nationwide non-profit where we instruct people of all ages about our constitutional form of governance, with a focus on bringing our nation back to higher constitutional principles as the supreme law of the land. I travel the country to speak to numerous groups and routinely appear on national media outlets. I also founded the Global Veterans Coalition and run this organization across eight countries. Finally, I work as a peer-to-peer counselor with veterans suffering from Post-Traumatic Stress Disorder and serve alongside of numerous veteran and liberty-focused organizations. Our collective goal is to return to the Constitution and Restore Liberty.

What is the “Defend the Guard Act?”

This act is a necessary step to realign the Government of Montana and the Federal Government back to the U.S. Constitution. It is state-level legislation to prohibit the overseas deployment of the state's National Guard units without a Congressional declaration of war.

What does it do?

More specifically, the act says the Department of Defense serving as the executive agent for the federal government un-

der the President of the United States must abide by the U.S. Constitution's requirement that only the U.S. Congress has the power — pursuant to Article I, Section 8 — “to declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water.”

Why is it Needed?

The U.S. Constitution as the supreme law of the land vests the power to declare war exclusively in the U.S. Congress. This clear letter of the law has been bypassed or ignored for years. Congress has repeatedly abdicated its duty by unconstitutionally delegating its authority to the executive branch. This violates the separation of powers. We need to return to the design of the U.S. Constitution. If we are willing to ignore the letter of the law on the most crucial decision a nation makes, then what else will we ignore?

To put it simply, Congress declares war and the President executes the war as Commander in Chief (Article II, Section 2). The two functions were never meant to be delegated in either direction. The President cannot declare and execute the war on their own. That's something you see in dictatorships. This is a constitutional republic, and those decisions are made by the people through representatives. The law is clear on this, we all must accept the risk of war and stand behind that effort. Today's expeditionary military mindset looks more like the time of the Roman Empire, where those in uniform served at the whim of the emperor, not at the will of the people.

What is its Foundation?

The Constitution of the United States of America is the foundation for this resolution. Again, Article I, Section 8 does not leave any wiggle room. Congress and Congress alone has this power, it cannot be delegated. The reason is that our Founders were wise enough to know that Congress is the body of government closest and therefore most responsive to the people.

The U.S. Constitution, therefore, does the following:

- a. Requires Congress to declare war.
- b. Requires the President (Commander in Chief) to prosecute the war.
- c. Requires by logical extension that through the laws of this union that the National Guard only be deployed to overseas combat by approval of Congress and no other.

The other critical component of the foundation of this argument is the Tenth Amendment of the U.S. Constitution. It is

the duty of the states to interpose between the states and the federal government when the federal government takes part in unconstitutional actions. To violate Article I, Section 8 of the constitution is an unconstitutional action.

Defining the Guard/Militia

In the U.S. Constitution, Article I, Section 8, the militia is also addressed—specifically in Clauses 15 and 16. These same clauses are the basis for the formation of the National Guard. The Army National Guard even emphasizes this fact in their charter.

“The Army National Guard’s charter is the Constitution of the United States. Article I, Section 8 of the U.S. Constitution contains a series of ‘militia clauses,’ vesting distinct authority and responsibilities in the federal government and the state governments.”

Clause 15 delegates to the Congress the power for the calling forth of the militia (National Guard) in three situations:

- a. to execute the laws of the union,
- b. to suppress insurrections, and
- c. to repel invasions.

The militia was formerly known as “the whole people, except a few public officers.” This was further understood as all able-bodied males between 16 and 45 and up to 55 years of age. The Dick Act of 1903 then limited the scope and scale of this definition to control the extent to which militias could be called into Federal Service.

Therefore, the militia is the National Guard and is governed by Clauses 15 and 16 as it pertains to the role of the U.S. Congress and the states.

What about Authorizations for the Use of Military Force (AUMFs)?

The United States has not declared war since World War II. Yet we spend decades at war anyway. Korea, Vietnam, Iraq, Afghanistan, Syria, Somalia, Libya, the Philippines, and other locations around the world have seen Americans in conflicts Congress never truly authorized. Even post-9/11, no war was declared. Presidents Bush, Obama, and Trump have all leveraged these authorizations.

The simple answer is the AUMF subverts the constitutional process by having Congress delegate powers to the president it is not allowed to delegate.

What about H.J.Res.542 – The War Powers Resolution?

The War Powers Resolution of 1973 is itself not constitutional. Here's the

timeframe:

a. The President must inform Congress within 48 hours of committing armed forces to action.

b. Forces are prohibited from remaining in combat for more than 60 days without congressional approval.

c. There is a 30-day withdrawal period if Congress does not authorize those forces to remain deployed.

d. This means forces can remain in combat for up to 92 days without congressional approval.

The resolution was intended to give the president the ability to respond rapidly to situations that might be of concern to the United States' national security. In fact, it gave the president the power to embroil America in conflicts to the point where we would be a nation at war and only have the choice to win or lose considering how much can happen in 92 days.

Engaging in an armed conflict based on the discretion of only the president is not how America is supposed to work. To call the National Guard into such a conflict based on the War Powers Resolution is to build a decision on the sand. We did not authorize the three branches of government to have the power to delegate their sole responsibilities to other branches of government. This resolution only highlighted the violations of the separation of powers.

The Threats Used Against this Constitutionally-Based Bill

a. Base Realignment and Closure

There might be threats from the Pentagon to close bases in Montana if we follow through. This is called Base Realignment and Closure (BRAC). The real threat they are trying to leverage is the economic impact on locations that have federal military bases. Having been through this process more than once, I can guarantee it is not as easy as a phone call. It is a large movement of many agencies of government and Congress. Not only are there many people involved in these decisions that can take years, but the cost and logistics of a base closure also make the threat nearly an empty one. For Montana specifically, Malmstrom AFB is a significant strategic base with responsibilities that would be near impossible to move.

Montana has an opportunity to lead and could show other states that the clear direction of the constitution matters. In doing so other states might follow the same path and send a message that will be clearly understood. We should not bow to bullying and call their bluff instead.

b. National Security is At Risk

It is not. In fact, Congress over the last few years rarely showed up for in-person votes and used modern technology to work and vote remotely. If we need to go to war overseas immediately, then Congress can vote immediately too.

This resolution means that the National Guard can be activated when Congress does its job. If the U.S. is invaded then the National Guard will respond, as in this bill we are only focused on overseas combat deployments.

The greater risk to our nation's security is to continue to allow Congress to "pass the buck" and ignore the constitution.

c. The Courts

The Supreme Court has not settled this, and as the weakest of the three branches of government, it can render an opinion only. However, what is case law now is that the federal government can activate the National Guard for overseas training but does not address activating the National Guard for combat. See *Perpich v. The Department of Defense*.

Even if Congress did try to create legislation to add that the federal government can activate the National Guard for overseas combat, the Governors would have to block that activation until Congress made a formal declaration of war. Again, technology can make this a fast process and if governors saw the declaration as more likely than not they are free to issue warning orders to the state's National Guard units to prepare them for mobilization.

d. Funding and Equipment Restrictions or Removal, to include Pay and Benefits removal for those still serving and the retired

Much like the threats to close bases, this threat is not convincing or likely to realize.

More importantly, the constant threat of removing funds is driving bad decisions and policies across America. Funds come with strings attached. The Montana legislature should not too quickly toss aside the foundational tenets of the U.S. Constitution because of threats concerning money or equipment.

Again, call their bluff and do not be bullied, threatened, or coerced.

e. Does not conform with the U.S. Constitution

You will likely hear that this bill does not conform to the U.S. Constitution, this is a false statement. The Supremacy Clause does not mean that the federal government is supreme in all things. It means that laws that are passed "in pursu-

ance of" and abiding by the Constitution are supreme. House Bill 527 is before this committee specifically because the federal executive authority is operating outside of constitutional limits and Congress continues to allow this despite the clear reading of the highest law.

You may also hear that this bill would raise issues of constitutional conformity issues. Yes, it will. This bill is intended to place government back into the bounds of constitutional authority, therefore the question of conformity to the Constitution is the whole point.

The Higher Principles

The U.S. Constitution is the highest legal authority in the land. Article I, Section 8 of the Constitution is clear. We the people are the enforcers of the contract that is the U.S. Constitution. We as principal agents delegate power, and those who delegate power can remove that power. The government is our agent and cannot operate against our contract, or further delegate the powers we've limited them to in the first place. Montana can and should lead in this effort. I call on the legislature and the Governor to instead rise in courage and let the Constitution be enforced as it is the highest law of the land. This is what it looks like to exercise the Tenth Amendment. Montana should lead this effort, not follow.

The Oath of Office. To all who have worn the uniform and still do, you recited the Oath of Office, I remind us all of that oath:

"I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion. So help me God."

We are sworn to support and defend the Constitution, not Congress, not the president—only the Constitution. When we took that oath, we were never allowed to ask if doing so would be easy. The legislature should know that those who take this oath back this House bill as it is part of us holding to our oath and not being swayed by bribery, or coercion.

Key Quotes

"The safest way to make laws respected is to make them respectable." -- Frédéric Bastiat

"The Constitution supposes, what the History of all Governments demonstrates,

that the Executive is the branch of power most interested in war, & most prone to it. It has accordingly with studied care, vested the question of war in the Legislature." -- James Madison

"In the general distribution of powers, we find that of declaring war expressly vested in the congress, where every other legislative power is declared to be vested; and without any other qualification than what is common to every other legislative act. The constitutional idea of this power would seem then clearly to be, that it is of a legislative and not an executive nature...Those who are to conduct a war cannot in the nature of things, be proper or safe judges, whether a war ought to be commenced, continued, or concluded. They are barred from the latter functions by a great principle in free government, analogous to that which separates the sword from the purse, or the power of executing from the power of enacting laws." -- James Madison

"The President is to be commander-in-chief of the army and navy of the United States. In this respect his authority would be nominally the same with that of the king of Great Britain, but in substance much inferior to it. It would amount to nothing more than the supreme command and direction of the military and naval forces, as first General and admiral of the Confederacy; while that of the British king extends to the *declaring* of war and to the *raising* and *regulating* of fleets and armies, all which, by the Constitution under consideration, would appertain to the legislature.¹ The governor of New York, on the other hand, is by the constitution of the State vested only with the command of its militia and navy." — Alexander Hamilton

The states "have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights, and liberties appertaining to them." — James Madison

"The executive has no right, in any case to decide the question, whether there is or is not cause for declaring war." -- James Madison

FISCAL NOTE

**DEFEND
THE GUARD**
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Division of the Budget
Landon State Office Building
900 SW Jackson Street, Room 504
Topeka, KS 66612

Adam Proffitt, Director



Phone: (785) 296-2436
adam.c.proffitt@ks.gov
<http://budget.kansas.gov>
Laura Kelly, Governor

January 25, 2022

The Honorable Robert Olson, Chairperson
Senate Committee on Federal and State Affairs
Statehouse, Room 144-S
Topeka, Kansas 66612

Dear Senator Olson:

SUBJECT: Fiscal Note for SB 370 by Senate Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning SB 370 is respectfully submitted to your committee.

SB 370 would enact the Defend the Guard Act. The Kansas National Guard, or any of its members, would not be released from the state into active duty combat unless the United States Congress has passed an official declaration of war or has taken official action to activate the Kansas National Guard. The Governor would be required to take all actions necessary to comply with such declarations or official actions. No member of the Kansas National Guard would be forced to receive a COVID-19 vaccination or be disciplined if he or she refuses to receive any COVID-19 vaccination or other medical treatment for the COVID-19 virus.

The Adjutant General's Department states that enactment of SB 370 would not have a fiscal effect.

Sincerely,

Adam Proffitt
Director of the Budget

cc: Michael Neth, Office of the Adjutant General

SUPPORT IN CONGRESS

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United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 117th CONGRESS, SECOND SESSION

Vol. 168

WASHINGTON, THURSDAY, FEBRUARY 3, 2022

No. 22

February 3, 2022

CONGRESSIONAL RECORD — *Extensions of Remarks*

E103

DENOUNCING RUSSIA-UKRAINE WAR MONGERING

HON. PAUL A. GOSAR

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 3, 2022

Mr. GOSAR. Madam Speaker, I rise today to address the drumbeat for war in Eastern Europe we have been listening to for weeks now.

For over two weeks the American people have watched with intense concern and uneasiness the heightened tensions between Ukraine and Russia.

It is not so much the border issues between these nations that concerns Americans, but the loose talk of the Biden Administration to involve the United States in a hot war against Russia.

Americans do not dread that territorial disputes are taking place over 6,000 miles away. They dread that the Biden administration may involve them in another costly, stupid war, one with potentially devastating results for their families.

The foreign policy issues of Eastern Europe are complex, but the law is not. The Constitution of the United States, written plain as day in Article I, Section 8, Clause 11, gives Congress the sole power to declare war.

No one else. Not the president, not the lifelong bureaucrats in the State Department, or the diversity-trained generals in the Pentagon, and especially not the quote-unquote "experts" educated beyond their capacity.

Only the people's elected representatives.

I have served in this body for over a decade, and it's clear to me that Congress has no interest in picking up its constitutional prerogative or making itself accountable to the voters.

In their absence, I believe the need for action must devolve to the states. Federalism requires as much.

In Arizona, State Senator Wendy Rogers has introduced a bill called the Defend the Guard Act. It stipulates that unless Congress has formally declared war, Arizona National Guardsmen are prohibited from being deployed into active combat overseas.

Rogers is a retired Lieutenant Colonel who served for twenty years in the U.S. Air Force. And I think she speaks for a lot of soldiers who are tired of being sent into undeclared, no-win wars that go on for decades.

One of America's finest soldiers, two-time Medal of Honor recipient and Marine Corps Major General Smedley Butler, said of our troops, "We Americans who will protect our flag should have a voice in where it is flown."

I agree. The United States of America has the greatest, bravest fighting force in the history of the world.

And if Congress has one ounce of respect for their courage and sacrifice, and the founding document they swore an oath to defend with their lives, we would vote before ever sending them into battle. Our names should be on the dotted line before their boots ever hit the ground, whether in Ukraine or anywhere else in the world.

And until Congress declares war as required by the Constitution, not a single Guardsman from Arizona or any other state should be deployed into combat.

I believe Arizona ought to be the first state to pass the Defend the Guard Act and lead the way in protecting our sons and daughters in uniform from federal abuse and challenge this Congress to start following every part of the U.S. Constitution.

If history has taught us anything it is this: we have lost trillions of dollars and tens of thousands of American lives fighting ridiculous wars in Vietnam, Iraq, and Afghanistan. We have the best military force in the world and some of the most inept military leaders. And to be fair, the political rules imposed on our military leaders, the so-called Rules of Engagement, deprive our military of a clear path to victory. Indeed, the political aspects of those wars, to "build nations" or to win hearts, is as inane as it was unsuccessful. War is to destroy the enemy, not build nations.

Historical failures of Western countries confronting Russia militarily in Eastern Europe in the winter taught us the foolhardiness of such an effort. We cannot make the same mistake, in a conflict which we have no justification to be in to begin with.

Most critically, the United States has no interest to protect there. Certainly no interest strong enough to risk war with Russia.

I denounce the war mongering.

The LIBERTARIAN INSTITUTE

Arizona Must Pass 'Defend the Guard'

by Paul Gosar | Feb 14, 2023

President Joe Biden's foreign policy is fundamentally broken. What should have been a clean, quick withdrawal from Afghanistan was given an artificial extension by the White House and bungled by complacent Pentagon brass. Russia's invasion of Ukraine has been exacerbated by the administration's sabotaging of diplomatic negotiations and determination to increase American military involvement. All to protect Ukraine's borders while over six million illegal aliens cross over our border in just the past two years.

But these problems did not begin on January 20, 2021. For decades our foreign policy has been piloted by an insulated, egomaniacal elite who seek to use American military might to remold the rest of the world by force—and simultaneously transform the United States to look like the rest of the world.

Under President Donald Trump we had a brief respite, with no new protracted wars and a restraining hand against the worst inclinations of the federal bureaucracy. But we must go farther. We must abandon these globalist pursuits, and return to a foreign policy that prioritizes the security and liberty of Americans here at home.

For over a decade I have represented you in Washington DC attempting to reign in the empire's nation-building, foreign aid giveaways, and bloody regime-change wars. Just last week, I was one of only ten members of the U.S. House of Representatives to co-sponsor a resolution to end the more than \$100 billion in military assistance we've outsourced to Kiev.

That's because at Joe Biden's direction we have depleted our weapon stockpiles, intensified our inflation crisis, and heightened the risk of a nuclear exchange, all in service of dictating where the Russian-Ukrainian border is drawn in the Donbas. Our government treats what's happening in Eastern Europe as a global crisis requiring our utmost attention, meanwhile hundreds of thousands of unknown individuals enter our country every month.

Putting a stop to this reckless gravy train should be a minimal threshold for Congress. But it's one that's not being met.

In our federal system, when the national government proves unable or unwilling to tackle a problem, it's the duty of the sovereign states to step up and take action. And we need action in Phoenix.

Two companion bills have been introduced in the Arizona legislature, H.B. 2320 and S.B. 1367, the Defend the Guard Act. These bills would ensure that the Arizona National Guard could not be deployed into an unconstitutional war like the one in Syria, or into Ukraine if Joe Biden continues our country's descent into World War III.

The National Guard is the backbone of the United States military, and it ought to play an integral role in our national defense. The Defend the Guard Act would not inhibit the use of the Arizona Guard to complete a domestic mission under Title 10, or even the Guard's deployment overseas for training missions in allied countries like Kuwait or Germany.

All the bill requires is a declaration of war by Congress before the

Arizona National Guard is sent into active combat. That's the same precondition the Founding Fathers gave in Article I, Section 8 of the United States Constitution.

For over seventy years, from Korea to Libya, we have seen our military deployed into costly wars without consent or consultation from the people's representatives. That is unconstitutional, immoral, and antithetical to the American conception of democratic government.

I cannot singlehandedly stop our endless wars. And a majority of Congress has no appetite for enforcing the checks and balances of our Constitution and actually debating whether we should be at war with Russia, and what that would mean for our country. But at least the Grand Canyon State can stop her National Guard from fighting undeclared wars based on executive whim.

Some opponents contend that passage of this bill would potentially threaten the Arizona National Guard's federal funding. This is incorrect. There is nothing in federal law that would eliminate federal funding if Arizona passes the Defend the Guard Act. Nor would Congress pass such legislation. The federal government needs a well prepared Guard.

But, just as importantly, the federal government needs a declaration of war from Congress before it sends American soldiers all over the globe to fight to protect other countries' borders. This is a fundamental precept of the Constitution and representative government. Anything less will only put our soldiers at great risk, increase our national debt, and accomplish next to nothing. We are not a police force. We are a military. That is the only justification to send the National Guard overseas to fight and die. The cause has to be valid, righteous, and approved by Congress.

I pledge that under no circumstances will I allow the Biden administration to defund our state's National Guard. I know the House of Representatives would not approve such dereliction and nonsense. And the House controls the purse strings.

A free people should not allow themselves to be threatened with their own tax dollars, especially when submission compromises both the safety of our soldiers and the rule of law.

The Senate version of the bill, S.B. 1367, will be presented tomorrow before the Military Affairs and Public Safety Committee. It has four Republican co-sponsors, including ret. Air Force Lieutenant Colonel Wendy Rogers, and the House version has eleven co-sponsors.

I encourage all residents of Arizona to contact their local representatives and tell them that I support passage of the Defend the Guard Act, and so should they.

This is legislation that puts our soldiers, and America, first. And I'm grateful to the veterans organization Bring Our Troops Home for bringing it to my attention.



Paul A. Gosar, D.D.S., serves as the representative from Arizona's 9th Congressional District.

More information: BringOurTroopsHome.US and DefendTheGuard.US



"I know there's a lot of anecdotes about different National Guardsmen or different active duty service members and asking them, 'hey do you want a declaration of war before you go off and do your duty?' And I was one of those kids after I graduated from the four years of hell I did at the Air Force Academy. I was gung-ho and wanted to get into the fight. And I probably would have said, 'No I don't want to wait for some politicians. I want to get over there.' But that's why we have prudent, wise civilian control over the military. And we all took an oath of office."

- DELEGATE PAT MCGEEHAN OF WEST VIRGINIA, RET. U.S. AIR FORCE OFFICER

"There is a disconnect demonstrated by the way in which authority has slowly been usurped by the federal executive branch, which is the very issue this legislation seeks to remedy. This is the most significant legislation of our lifetime. And future generations will thank us for not bowing to the war machine."

- REP. BEN ADAMS OF IDAHO, FORMER MARINE, 2 COMBAT TOURS



"For nearly eight decades Congress has not made a declaration of war. Even so, America's sons and daughters have been sent overseas to fight on foreign soil. Often times the Texas National Guard has been called upon by the federal government to go and fight in these conflicts. The Texas legislature has no say over whether or not the active-duty military is sent off to fight. But we can exercise our right to defend the men and women of the Texas National Guard and stop them from being sent to fight and sometimes die in unconstitutional wars regardless of who controls the White House."

- REP. BRYAN SLATON OF TEXAS

"If you care about being a 'Constitutional Conservative', if you're Pro-Life, if you care about economic issues, this bill is all that in one. This bill should be at the top of everybody's list."

- REP. AARON AYLWARD OF SOUTH DAKOTA





U.S. Senator Rand Paul in Wyoming for 'Defend the Guard' rally

By Grace Foulk | Friday, Feb 14, 2020

CHEYENNE, Wyo. (KGWN-TV) — House Bill 0098 is on the consent list for February 14, 2020. The bill, which would bar Wyoming guard troops from being deployed to active combat without a declaration of war from Congress.

At the rally, Rep. Lindholm, Rep. Andi Clifford, U.S. Senator Rand Paul and Dan McKnight, Chairman of BringOurTroopsHome.US, all spoke at the rally.

McKnight, a veteran, said, "It will actually strengthen the National Guard's position in the foreign policy scene. It gives the governor the power and authority to say 'No, we are not going to participate in these endless wars unless Congress first does their job.' We feel that it's the ultimate 'support our troops' legislation that can be done at the state level."

U.S. Senator Rand Paul said, "It's rare that a state legislature has a vote on foreign policy and this is a rare time. I think we've been at war so long that we need to do it."

More information: DefendTheGuard.US, a project of BringOurTroopsHome.US and WyBringOurTroopsHome.com

“Now this conjunction of an immense military establishment and a large arms industry is new in the American experience. The total influence—economic, political, even spiritual—is felt in every city, every Statehouse, every office of the Federal government...In the councils of government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex.”

- DWIGHT D. EISENHOWER, 5-STAR GENERAL OF THE ARMY,
34TH PRESIDENT OF THE UNITED STATES

“We’ve heard so much about—for the last 40 years—support the troops. In those 40 years the way to support the troops was to bring them home from the war they were fighting and should not have been fighting. You’ve brought to my attention recently...a group called BringOurTroopsHome.US. Sounds very good to me.”

- DANIEL ELLSBERG, PENTAGON PAPERS WHISTLEBLOWER

“The Constitution supposes what the history of all governments demonstrates, that the executive is the branch of power most interested in war, and most prone to it. It has accordingly with studied care vested the question of war to the legislature.”

- PRESIDENT JAMES MADISON

“When all government, domestic and foreign, in little as in great things, shall be drawn to Washington as the center of all power, it will become as venal and oppressive as the government from which we separated.”

- PRESIDENT THOMAS JEFFERSON

SUPPORT FROM VETERANS

**DEFEND
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RESOLUTION

POST NO. 81, THE AMERICAN LEGION IN REGULAR MEETING ASSEMBLED IN
CLEVELAND, TENNESSEE ON JANUARY 9TH, 2023

Whereas, Article I, Section 8 of the Constitution of the United States vests in the United States Congress the exclusive power to declare war;

Whereas, In spite of the clear language of the U.S. Constitution, vesting the power to declare war exclusively in the U.S. Congress, the U.S. Executive Branch has unconstitutionally assumed that power while the Congress has abdicated its constitutional duty;

Whereas, The Father of the Constitution, James Madison, wrote, "The Constitution supposes, what the History of all Governments demonstrates, that the Executive is the branch of power most interested in war, and most prone to it. It has accordingly with studied care vested the question of war to the Legislature.";

Whereas, Although the U.S. Congress has not declared war since 1942, the nation has since gone to war repeatedly at the whim of the Executive Branch; and

Whereas, When such unconstitutional actions are taken by the federal government, it is the proper role of the states themselves to take action to remedy such situations, as outlined in the Kentucky and Virginia Resolutions of 1798; now, therefore, be it

1. Calls upon the State Legislatures to enact legislation to prohibit the States' National Guard and any member thereof to be released from the state into active duty combat unless the U.S. Congress has declared war pursuant to Article I, § 8, Clause 15 of the U.S. Constitution, and only for the express and explicit purposes enumerated in the Constitution: to "execute the Laws of the Union," repel an invasion, or suppress an insurrection;
2. Calls upon the Legislatures and Governors of the States not to comply with any order from the federal government to release the State's National Guard into federal service unless the U.S. Congress has declared war pursuant to Article I, § 8, Clause 15 of the U.S. Constitution, and only for the express and explicit purposes enumerated in the Constitution: to "execute the Laws of the Union," repel an invasion, or suppress an insurrection; and
3. Further, calls upon the States to bring home said National Guard troops already so deployed to foreign conflicts immediately.

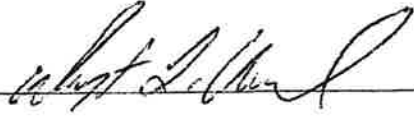
RESOLVED, By Post No 81, The American Legion in Regular Meeting assembled in Cleveland, Tennessee on January 9th, 2023, That the American Legion, Post No. 81, urges State Government to hereby fully support the "Defend the Guard Act"; and

RESOLVED, That the Governor of Tennessee shall not mobilize Tennessee National Guard personnel to foreign service under Title 10 orders without an official Declaration of War from the United States Congress.

This Resolution is hereby ratified by Two-Thirds (2/3) Majority Vote of the General Membership present at the regular monthly meeting on: 09 January 2023



Post Commander: Rick Williams



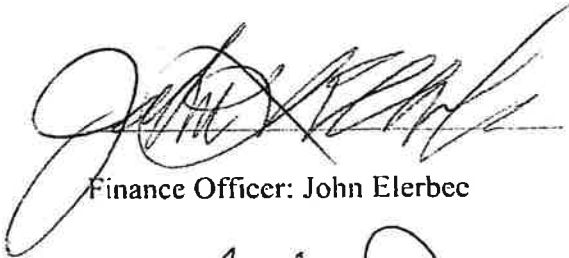
Post Adjutant: Dwight Woodcock



1st Vice Commander: Rusty Bryant



2nd Vice: Marc Baker



Finance Officer: John Elerbec



Executive Committecman: James Hoover



Executive Committeeman: Mike Pierce



Executive Committeeman: Mitch Greene

**MADISON REPUBLICAN COMMITTEE OF MAINE IN REGULAR MEETING
ASSEMBLED IN MADISON, MAINE ON FEBRUARY 16th, 2021**

RESOLUTION NO. 2021.1

SUBJECT: DEFEND THE GUARD ACT

ORIGIN: GENERAL MEMBERSHIP, JANUARY MONTHLY MEETING

REFERRED TO: GENERAL MEMBERSHIP MADISON REPUBLICAN COMMITTEE OF MAINE

WHEREAS, Article I, Section 8 of the Constitution of the United States vest in the United States Congress the exclusive power of war; and

WHEREAS, In spite of the clear language of the United States Constitution, vesting the power over war exclusively in the United States Congress, the United States Executive Branch has unconstitutionally assumed the power while the United States Congress has abdicated its constitutional duty; and

WHEREAS, Although the United States Congress has not declared war in seventy-nine (79) years, this Nation has since gone to war repeatedly at the whim of the Executive Branch and;

WHEREAS, When such unconstitutional actions are taken by the Federal Government, it is the proper role of the States themselves to take action to remedy such situations, as outlined in the Kentucky and Virginia Resolutions of 1798; and

WHEREAS, The Father of our Republic, George Washington, once wrote "The Constitution vests the power of declaring war in Congress; therefore, no offensive expedition of importance can be undertaken until after they shall have deliberated upon the subject and authorized such measure"; and

WHEREAS, The Father of the Constitution, James Madison, once wrote: "The Constitution supposes, what the History of all Governments demonstrates, that the Executive is the branch of power most interested in war; and most prone to it. It has accordingly with studied care vested the question of war to the Legislature"; and

WHEREAS, The author of the Declaration of Independence, Thomas Jefferson, once wrote: "We have already given in example one effectual check to the dog of war by transferring the power of letting him loose from the Executive to the Legislative body..." and "Considering that Congress alone is constitutionally invested with the power of changing our condition from peace to war, I have thought it my duty to await their authority for using force in any degree which could be avoided"; and

WHEREAS, The Tenth (10th) Amendment of the United States Constitution states: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people", giving the States or the people the power to nullify, or invalidate; and

WHEREAS, The National Guard is under jurisdiction of States unless during time of Declared War, natural or man made disaster, therefore the consent of the Governor is necessary; now, therefore, be it

RESOLVED, By Madison Republican Committee of Maine, The Madison Republican Committee of Maine in Regular Meeting assembled in Madison, Maine on February 16th, 2021, That Madison Republican Committee of Maine, urges State Government to hereby fully support the "Defend The Guard Act"; and

RESOLVED, That the Governor of Maine shall not mobilize Maine National Guard personnel to foreign service under Title 10 orders without an official Declaration of War from the United States Congress.

This Resolution is hereby ratified by Two-Thirds (2/3) Majority Vote of the General Membership present at the regular monthly meeting on: February 16, 2021

[Signature]

Chair: Aaron Rollins

[Signature]

Vice Chair: Leon "Hoss" Dorr

[Signature]

Secretary: Holly Kinney

[Signature]

Treasurer: Diane Pinkham

[Signature]

Finance Officer: John Grooms Jr.



[Signature]

Notary Public, State of Maine

My Commission Expires: 03/23/2027



Notary Public, State of Maine

My Commission Expires: _____

[Signature]

Print Name Somerset

STATE OF MAINE COUNTY OF _____

The foregoing instrument was acknowledged before me this 22 day of February, 2021

by Holly J. Kinney

Personally Known ☒ OR Produced Identification _____

Type of Identification _____

[Signature]
Notary Public

Print Name

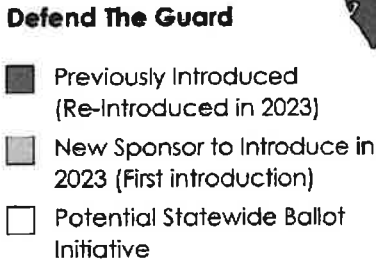
The American Legion has long supported Congress as the authority to declare war.



"Our nation's founders made clear that declaration of war is the solemn and sole responsibility of the U.S. Congress. A strong national defense is an original pillar of The American Legion. 'Forever war' is not. The American Legion calls on Congress to once again follow the text of Article I, Section 8, Clause 11, of the U.S. Constitution."

-American Legion National Commander Vincent "Jim" Troiola-

**DEFEND
THE GUARD
UPHOLD THE CONSTITUTION**



DEFEND THE GUARD

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BRING OUR TROOPS HOME

Bring Our Troops Home is a not-for-profit organization. The leadership and founders served in the Global War On Terror (GWOT) and recognized that the endless wars in Afghanistan and Iraq were the result of the abdication of authority by Congress and the increased influence of the defense lobby.

The organization has grown beyond the borders of its home and base of operations in Meridian, Idaho and now has members and supporters in every corner of the world. Our regular newsletter and communications are distributed, read, and shared by hundreds of thousands of like-minded Americans every week.

Our efforts align with our core belief that the Constitution, as written by our Founding Fathers, is clear that Congress and Congress only has the authority to change the condition of our nation from peace to war. That change must come from a constitutional declaration of war.

To learn more about our organization visit www.BringOurTroopsHome.US.

To learn more about the legislation visit www.DefendTheGuard.US.

Thank you for your consideration.

Sincerely,



Dan McKnight, Chairman
Bring Our Troops Home